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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/783,960	02/20/2001	Michael L. Schweiss	S339.12.2	2940

7590 03/17/2004

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6750 France Avenue South, Suite 350
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EXAMINER

JOHNSON, BLAIR M

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 03/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/783,960

Applicant(s)

SCHWEISS, MICHAEL L.

Examiner

Blair M. Johnson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 13-15 and 17-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 13-15 and 17-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Note: The final rejection of 7/23/03, paper No. 18 is hereby withdrawn and prosecution in this case, subsequent to Applicant's filing of appeal brief on 12/22/03, paper No. 20, is reopened due to an inadvertent error made by the Examiner. The rejection of claims 18-20 should not have been included in the rejection of claims 1-5 as being unpatentable over Keller in view of Ballyns et al or Horn. Claim 18 includes limitations which are addressed by the rejection of claims 13 and 14 (previously included claim 16 has been canceled) as being unpatentable over Keller in view of Ballyns et al or Horn and further in view of Bonacina. In addition, the Hall reference has been removed from the rejection as it is redundant over the Ballyns et al reference. The rejection below is a repeat of the final rejection except for these minor issues.

Claim Rejections - 35 USC § 103

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keller '914 in view of Ballyns et al.

Keller discloses the panels, an operating cord being anchored to the top panel and wound about a shaft 42 and sleeve 46 which are driven by a motor 40. What Keller does not show is a web. However, while a web is considered to be the full mechanical equivalent of the cable 48 in Keller, Ballyns et al (at 70) is further cited to teach such as being old. The web permits a more controlled wind up than a cable since the web does not move laterally on the spool as does a cable as it winds thereon. In view of this teaching, it would have been obvious to modify Keller whereby he uses a web instead of a cable. It is inherent as well as pointed out by Ballyns et al at column 7, lines 65-

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column 8, line 1, that the speed at which the door opens and closes will be affected, i.e. accelerated and decelerated, respectively, by the winding of the web on the spool. The particular kind of web is considered to be an obvious matter of choice of design as each of the material recited are well known and have particular features which render them useful.

Claims 13,14 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keller '914 in view of either Ballyns et al or Horn as applied above, and further in view of Bonacina.

Providing a shield for any cable, web, etc., collected on a winch is well known as illustrated by Bonacina at 4, such a shield preventing the cable, web, etc., from coming off of the winch, preventing detritus from foiling the winch, etc. Based on these teaching, it would have been obvious to modify Keller to have such a shield.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Keller '914 in view of either Ballyns et al or Horn and Bonacina as applied above, and further in view of Spangle.

Spangle discloses a rigid rod E to attach a web to a winch, such providing a structurally sound method for such an attachment which balances the load on the winch. In view of this teaching, it would have been obvious to modify Keller whereby his web, as applied by Ballyns et al or Horn, is so mounted to sleeve 46.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Keller '914 in view of either Ballyns et al or Horn and Bonacina as applied above, and further in view of Sanders.

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Sanders discloses a means 24,25, for adjusting the end of an anchored portion of a door operating cable. In view of this teaching, it would have been obvious to modify Keller whereby his anchored end 50 has such an adjustment feature to permit adjusting the cable/web.

Response to Arguments

The limitations regarding the increasing and decreasing rate of opening and closing of the door is merely an inherent function of the use of the web which overlaps as it is wound onto a winch spool. There are several reasons why one would choose to use a web. While some reasons are incidental to the "increase/decrease speed" phenomenon, another reason apparent to one of ordinary skill in the art is precisely to take advantage of this known event. Webs have other advantages alluded to above, including a more controlled winding over a cable which must be permitted to shift laterally on the spool and which also is susceptible to "pinching" or "binding", i.e. one layer of cable interfering with another layer of cable and preventing it from smoothly coming off of the spool. Ballyns et al is merely cited to show the established use of webs in opening and closing door.

What is gleaned from Spangle, as presented above, is the mere attachment of the web to the rotatable spool or drum I,D, with I being the "cylindrical member" of claim 13.

The second declaration by the Inventor is again appreciated. However, while the sales figures are significant, there is no nexus between increased sales and the point of novelty of the present invention. For such a statement to be persuasive, it must be clear

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from the facts that the alleged invention is solely responsible for the increase in sales.

This has not been established. See MPEP 7.16.03 which clearly specifies what is needed to overcome a prior art rejection by way of showing of commercial success. The requirements given therein have not been met by the two declarations submitted thus far. Regarding long-felt need, Applicant has not provided any evidence that the problem he has solved has been recognized and attempts by others have been made yet unsuccessful. See MPEP 716.04.

Regarding Applicant's appeal brief, it is noted that a clear and concise statement of which claims stand and fall together has not been provided. Groupings have been listed but then the prior art references are discussed without referencing the claims, and the claims have been discussed individually, thereby rendering grouping difficult to ascertain.

Conclusion

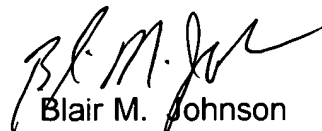
Due to reopening of the prosecution, this action is not made final.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Blair M. Johnson whose telephone number is (703) 308-0526. The examiner can normally be reached on Mon.-Fri., 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (703) 308-2686. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Blair M. Johnson
Primary Examiner
Art Unit 3634

BMJ
3/15/04